

# **Exhibit 15**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CITY OF ALMATY, et al,

Plaintiffs,

v.

15 Civ. 5345 (AJN) (KHP)

MUKHTAR ABLYAZOV, et al.,

Defendants.

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New York, N.Y.  
February 26, 2019  
12:00 p.m.

Before:

HON. KATHARINE H. PARKER

Magistrate Judge

APPEARANCES

BOIES SCHILLER FLEXNER LLP

Attorneys for Plaintiffs City of Almaty and BTA Bank

BY: CRAIG WENNER

MATTHEW SCHWARTZ

BLANK ROME LLP

Attorneys for Defendant Triadou SPV S.A.

BY: ALEX HASSID

DEBORAH SKAKEL

ROBYN MICHAELSON

SOLOMON & CRAMER LLP

Attorneys for Defendants

Viktor Khrapunov and Ilyas Khrapunov

BY: ANDREW SOLOMON

J2Q7FLAC

1           So, our proposal is to let them subpoena Litco, to  
2           allow us to turn over the unredacted billing records that show  
3           meetings with Arcanum. Again, we're not opposed to certain  
4           limited discovery into who at Litco and Arcanum knew what and  
5           when. We would certainly object and try to protect core work  
6           product about strategy and discovery into asset recovery  
7           specifically. We think we can do this limited discovery  
8           subject to a ruling that we're not going to waive privilege.

9           Meanwhile, we think -- I expect the defendant to say  
10          they still need to brief or have the common interest privilege  
11          issue decided -- which we can proceed on and receive  
12          briefing -- but this way at least we can do sanctions once at  
13          the end rather than sanctions for what the Khrapunovs request,  
14          Triadou gets discovery, and then sanctions again in response to  
15          Triadou later.

16          THE COURT: All right. Thank you, Mr. Wenner.

17          I'd like to hear from Triadou and also the Khrapunovs  
18          on this issue, and I am of the mind that we should try to  
19          streamline this. And I did briefly skim through the motions  
20          filed by Triadou and the Khrapunovs, and I guess what I want to  
21          clarify is one of the motions dealt with the two witnesses  
22          recently identified by plaintiff on their Rule 26 disclosure,  
23          and, as I understand what Mr. Wenner just said, is that  
24          plaintiffs do not oppose their being deposed.

25          MR. WENNER: That's correct, your Honor. And we're

J2Q7FLAC

1 happy to try to facilitate those depositions. I just want to  
2 be clear that they are not currently employees, but we believe  
3 that we can.

4 THE COURT: Where are those two witnesses?

5 MR. WENNER: They are in Kazakhstan, and we believe we  
6 can facilitate the depositions by video conference in  
7 Kazakhstan, and we would have to come back to your Honor to see  
8 if it's possible for them to agree to fly here. We don't have  
9 an answer to that.

10 THE COURT: All right. So, let's first address that  
11 issue, because maybe we can streamline some of the issues  
12 raised in the defendant's motion.

13 MR. HASSID: Sure, your Honor. With respect to these  
14 two witnesses, I won't rehash what is in the brief about why we  
15 think there is an issue.

16 But just to begin, we were aiming for preclusion of  
17 those witnesses because we think that runs afoul, and if  
18 they're precluded, then the depositions don't need to happen.

19 Secondly, our request for depositions wasn't we  
20 should depose them. It's we shouldn't be wasting our time or  
21 plaintiff's time or anyone's time or money on such depositions  
22 unless the witnesses are actually going to be called at trial.  
23 So, forcing everyone to potentially even to have these  
24 witnesses who when they were disclosed appeared to be current  
25 BTA employees, they were listed with BTA as their address -- we

J2Q7FLAC

1 THE COURT: OK.

2 OK. So, that's one aspect of your motion, those two  
3 witnesses. Then the other aspect of your motion, as I glean  
4 from my quick skim of it, was disclosure of certain information  
5 listed on plaintiff's privilege log, on the grounds that that  
6 information is not properly withheld on the basis of common  
7 interest privilege. Is that correct?

8 MR. HASSID: That is correct. And on that score your  
9 Honor may recall from your Litco order, which was ECF 901, you  
10 had indicated that it was premature to address communications  
11 between Almaty and BTA, or Arcanum and Litco, because we didn't  
12 have a log or identification of communications. So, that was  
13 sort of a natural outflow of getting that privilege log in  
14 December.

15 To Mr. Wenner's point about whether Triadou would then  
16 consider a second sanctions motion, to be frank, your Honor, I  
17 don't think that's something we've considered. I'm not saying  
18 it wouldn't happen or that there might not be a motion in  
19 limine down the road seeking an adverse inference of some kind,  
20 but I do think that we expect that our current motion would  
21 resolve the misconduct regarding the obfuscation of Litco.

22 In other words, if we win on common interest  
23 privilege, I don't expect we would go back and do it again,  
24 unless there was something truly egregious in there. And we  
25 don't know what we would find.

J2Q7FLAC

1 THE COURT: And why have you not subpoenaed Litco  
2 directly, as Mr. Wenner suggested you should have?

3 MR. HASSID: Perhaps, your Honor, that was confusion  
4 on our part for not doing so, but we had been arguing and  
5 agreeing that fact discovery was closed and no new efforts to  
6 take fact discovery could be conducted.

7 So, we perhaps should have sought leave to do it, but  
8 I think we figured that in our sanctions motion there is  
9 actually a request for a deposition of Litco in a 30(b)(6)  
10 capacity or Arcanum if needed. Again, we're trying to do it in  
11 such a way that we're not forcing more depositions on the  
12 parties if they can be avoided.

13 But, you know, on the 502 point, we said on the meet  
14 and confer that we don't view it as taking a different  
15 position. The Khrapunovs had asked for reproduction of Litco  
16 invoices without redactions, and had talked about doing it  
17 under a 502(d) order. Triadou took no position on that, but  
18 there is certainly a difference in statements in an invoice  
19 that might describe work that was performed versus the Litco  
20 agreement, which is what we wouldn't accede to a 502(d) order  
21 on, because that agreement we viewed as not privileged from the  
22 outset. In other words, I'm just clarifying that we don't view  
23 it as taking an inconsistent position on 502.

24 THE COURT: Right. What I understand you to be saying  
25 is that potentially invoices might contain work product that is

J2Q7FLAC

properly characterized as work product, whereas the agreement itself you took the position was not privileged and, therefore, not properly subject to a Rule 502 order.

MR. HASSID: That's exactly right.

THE COURT: OK, very good.

So, I'd like to hear from Mr. Solomon with regard to -- you have a motion for sanctions also, and I would like to hear from you regarding the timing of all of this and some of the suggestions that plaintiffs have made regarding depositions of individuals.

MR. SOLOMON: So, thank you, your Honor. I have not sought any additional discovery.

THE COURT: Right.

MR. SOLOMON: Because my position has been for a long time that discovery should be over and that we'd like to get this case resolved.

And, you know, to that point I just would point out that one of the aspects of our motion is Frank Monstray. And, you know, Einstein defines the definition of insanity as doing the same thing over and over again, expecting different results. So, I have been complaining about Monstray a lot, but the fact is BTA settled with Monstray in May of 2017 or the beginning of June 2017. They had him in their control for over a year. All this stuff about Trade Stock was available to them during the fact discovery. And had we gotten the materials, we

J2Q7FLAC

1 might have had a whole different fact discovery experience in  
2 this case. But now everything is being done in this sort of  
3 post fact discovery, which is of great prejudice to the  
4 defendants.

5 So, you know, I think that everything that should have  
6 come out of Monstray, that didn't because they sat on Monstray  
7 and didn't disclose him for a whole year -- just like Sater,  
8 everything that should have come out from Sater and Litco that  
9 they didn't disclose and their witnesses lied about -- none of  
10 that stuff should be part of the case. So, I don't need more  
11 discovery; what I need is less evidence.

12 THE COURT: You're seeking preclusion of Sater and  
13 Monstray as witnesses and preclusion of these two additional  
14 witnesses that were recently identified, although mentioned in  
15 various documents, interrogatory responses and the like.

16 MR. SOLOMON: Well, technically Triadou -- I didn't  
17 duplicate what Triadou did, so that's Triadou's motion.

18 THE COURT: Right. But I think you joined in what  
19 they were requesting; is that right?

20 MR. SOLOMON: Yes. And also sort of the fruit of the  
21 poisonous Sater tree.

22 THE COURT: Right.

23 MR. SOLOMON: Unless your Honor has any other  
24 questions, I'm not looking for more discovery; I'm looking for  
25 a dismissal of my case on mootness grounds.